

USAID UKRAINE COMMERCIAL LAW CENTER PROJECT

Contract No. 121-C-00-00-00823-00

Deloitte Touche Tohmatsu Emerging Markets, Ltd.

QUARTERLY PERFORMANCE MONITORING REPORT 2

For the Quarter Ending 31 January 2001

SPECIFIC ACTIVITIES DURING REPORTING PERIOD

ADMINISTRATIVE & INSTITUTIONAL

Staff development –

- Financial expert Halyna Dovhopol was hired on 15 November to serve as Financial Director. She has begun defining the full spectrum of financial operations the Center will need to conduct to do business in the local environment and to meet USAID and DTT EMG criteria.
 - Natalya Andriyevska was hired on 8 December to serve as Outreach & Information Director. This is the final programmatic director-level position to be filled.
 - Olena Dubinina, formerly of the Barents Group, joined our team as a seminar manager to oversee the organization of the many training events we have planned for the remainder of this year.
 - Natalya Lohinocheva joined the project on 27 December as Administrative Director. One of her current tasks was to develop an employee handbook for the Commercial Law Center.
 - Advertisements were placed in major newspapers for the Deputy Director position, left vacant in December with the resignation of Olena Lazorenko, who returned to her private consulting firm.
 - Interviews were held with candidates for Legislative Development Department staff lawyers. Offers were extended to Mykola Slyusarevsky of Kharkiv and Hennadiy Semenov.
 - All Project employees have signed Conflicts of Interest Policy statements.
 - A Project/Center organizational chart has been developed.
 - Negotiations are ongoing with GDIP, the state agency which provides contractual and payroll support for local nationals employed by international technical assistance projects. Our employees should be contracted and paid via GDIP effective 1 February.
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- Center staff prepared a memorandum on how the Ukrainian Center incorporation process should best proceed. The current Ukrainian tax regulations will substantially limit the ability of the legal entity we will need to incorporate in carrying out the tasks required under the Project SOW. It will still be necessary to use the Project Office as a financial operations vehicle for

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many transactions. The Project has also commissioned two local law firms to prepare legal briefs on the best way to incorporate the Center.

- A bilingual Mission Statement has been adopted for the Center, in addition to a special 'definition' of commercial law. The latter is especially important in the Ukrainian context since the area of law in question is defined in widely-varying ways.
- The Project received its shipment of computer workstations on 27 November.
- The Project received its official Ukrainian seal on 10 November and local bank accounts were in operation by the end of December.
- Negotiations have been ongoing with Kyiv-Mohyla Academy regarding the permanent relocation and operation of the Center at KMA by September 2001. Space has been identified within the Academy's Law School, immediately adjacent to the Business School. Both structures will contribute to the formation of a Commercial (Business) Law specialty at the Academy and to the Center's activities.

PROFESSIONAL DEVELOPMENT

Training Workshops

An annual program of training workshops was developed in broad outline form. The program calls for a series of six workshops, to be held from December 2000 to July 2001, that progress through discrete issues fundamental to commercial law. These are

- 1) Business Enterprises as Subjects of Entrepreneurial Activity;
- 2) Contract Law;
- 3) Legal Regulation of Debtor/Creditor Relations;
- 4) Protection of Consumer Rights and Unfair Business Practices;
- 5) Methods for Dispute Resolution; and
- 6) Comparative International Law and Practices.

Attendance at all the workshops would provide a basic overview of key areas related to commercial law, but each workshop will serve as a stand-alone course.

There will be approximately 25 attendees at the workshops, 70% of whom will be government attorneys. The appropriate target state ministries and agencies were identified. Requests were then sent to key governmental ministries and agencies to nominate appropriate attendees from these institutions, private sector attendees were identified, and invitations were sent out. All attendees are regularly contacted for confirmation of their attendance.

Detailed agendas for the first workshop have been developed, in close consultation with the International Law Institute.

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The first five-day Training Workshop was held in Kyiv from 11-15 December 2000. This workshop was entitled “Business Enterprises as Subjects of Entrepreneurial Activities” and covered the economic fundamentals of business in market environments, forms of business in Ukraine, state regulation of businesses, legal peculiarities of business structures and court practices, laws and draft laws, bankruptcy, and international practice. Ten Ukrainian and two international specialists made presentations, which allowed for a variety of styles providing stimulating, high quality, interactive sessions. Each day commenced with a normative economic discussion to establish a context for the subsequent focus on the actual Ukrainian legal environment governing the daily topics and Ukrainian practice within that legal environment.

The workshop was attended by representatives from the legal department and the department for economy and politics of the President’s Administration, the legal department of the Ministry of Economy, the legal department of the Ministry of Finance, the department for expertise of legal documents and agreements of the State Property Fund, the legal department of the Anti-Monopoly Committee, the legal department of the State Tax Administration and State Tax Inspector, the State Commission for Securities and Security Market, the High Court of Arbitration, the Kyiv Oblast Court of Arbitration and several lawyers from private law firms. Each attendee received comprehensive written materials covering all the topics presented at the workshop. The attendees assessed the workshop as practical, very useful and gave high marks for the professionalism and quality of the presenters. Lessons learned included: emphasize to presenters that the presentations should be practice oriented; provide presenters with the overall concept for workshop so that they can tailor their presentations to accomplish the desired results; encourage greater participation by the attendees; and allow more time for questions and answers. These lessons are already being incorporated in the planning and development of future workshops.

Continuing Legal Education (CLE) Seminars

A tentative core of five topic areas has been developed for the short continuing legal education (CLE) courses and work proceeded in assembling a list of speakers.

On 22 December the Center held its first day-long CLE Seminar on “The Problems of Practical Application of Commercial Law”. Presentations were made by two judges of the Higher Arbitration Court of Ukraine. The presentation method used was highly effective in that the judges juxtaposed the theoretical Ukrainian legal provisions with actual practical problems which have arisen. This focus on practical examples was very well received by the more than 30 participants of the CLE, who were encouraged to raise questions and probe the possible solutions. The examples that were discussed were part of the handouts that each attendee received. In evaluations the attendees rated both the topic and the speakers very highly and 14 of the respondents indicated that they would be willing to pay as much as USD 45 for this type of course in the future.

The Center is now developing a schedule and a curriculum for legal drafting seminars to be held throughout Ukraine in 2001. It is important that the Center coordinate with the Ministry of Justice, which has developed a series of seminars on legal drafting, so the efforts do not overlap in substance or targeted audience. The first CLE on legal drafting

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will serve as a pilot and be held in Kyiv in March 2001. It is anticipated the core participants will be members of the Verkhovna Rada and assistants of MPs. The legal drafting course will be a two or three day event and will cover such topics as: Legislative Regulation of Drafting, Concept of Drafting and Formalization of Laws and Bylaws, Techniques of Evaluation of Laws and Bylaws, Language of Normative Acts, Hierarchy of Legal Norms, Conflicts of Legal Norms, and others. The Center is now in the process of identifying qualified speakers who can also assist in the preparation of a legal drafting handbook.

LEGISLATIVE DEVELOPMENT

As part of this task the CLC has identified the list of draft laws that are on the agenda for possible consideration during the current session of the Verkhovna Rada. The most important laws that the Center will be working on are “On Pledge”, “On Hypothecation”, and “On the Order of Discharging Tax Obligations Behind Budgets and Other State Funds”.

A draft of the latter law was of immediate concern during this reporting period, because it was scheduled to be considered by Parliament on 2 November. The draft contained several provisions inimical to Ukrainian bankruptcy and commercial practice and was inconsistent with constitutional provisions and other laws. The Center worked in coordination with USAID and the USAID Financial Restructuring Project to put together a position paper which was submitted to members of the Verkhovna Rada just prior to the hearing on the draft law. This effort was influential in the Verkhovna Rada failing to adopt the law in the second reading. The Center will continue to coordinate with the USAID Financial Restructuring Project to develop a strategy for providing the Parliament with concrete proposals for amending the draft to comport with constitutional principles and sound commercial practices. The Project also commissioned two expert opinion memoranda from private attorneys on the topic and researching the handling of tax lien priority issues in the United States and Europe.

The Center is also working on these issues closely with the Tax Policy Advisor to Ukraine of the US Treasury, the USAID funded Barents Group tax advisors and legal specialists, and the Ukrainian–European Policy and Legal Advice Center/TACIS program.

The draft Law on “The Procedure for Discharging Taxpayer Liabilities to the Budgets and Special Purpose State Funds” came before the Verkhovna Rada for approval on 21 December 2000 and Parliament adopted this law without introducing the recommended amendments. The Center is developing strategies for introducing required changes with the amended Tax Code that will be considered by the Parliament this year. It is hoped that these amendments would help mitigate the effects of the newly-adopted law.

The CLC was approached the National Bank of Ukraine (NBU) to review a draft Law on Financial Services that has been prepared by its legal department. The law would regulate

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financial services industries such as insurance companies, trust companies, consumer finance companies, pension funds, credit unions and other non-banking financial institutions. The NBU has suggested that it might be appropriate for the Center to make recommendations to reconcile the draft with existing western laws.

A series of meetings were held with the Head of the Committee on Banking and Finance of the Verkhovna Rada of Ukraine regarding the "Law on Hypothecation" in anticipation of its second reading in the Verkhovna Rada. The Center has been asked to review the draft, collect and assess related materials and make recommendations for modification commensurate with Western standards.

The Center sponsored a roundtable at the end of December entitled "The Development of Ukrainian Legislation after Adopting the New Civil Code of Ukraine". This Roundtable was attended by members of the temporary special commission on the Civil Code of Ukraine and civil law experts who were responsible for writing the draft Civil Code. In addition the roundtable was attended by several members of the Verkhovna Rada and representatives of other donor organizations. The persons that drafted the Civil Code presented their views regarding required further legal activities after the adoption of the Civil Code and fielded questions. An important aspect of the roundtable was that it presented a forum for the Rada Members present to better understand specific, difficult principles of the Civil Code which they were interested in.

Two main results emerged: 1) institutions must be established that will monitor the process of adoption of ancillary legislation necessitated by the Civil Code and reconcile existing Ukrainian law with the Civil Code, and 2) there must be a group of experts who will review future proposed legislation to insure that it is consistent with the Civil Code. The professional legal newspaper *Yuridicheskaya Praktika* published a report based upon the findings of the roundtable objectively discussing the necessity for establishing the proper legal infrastructure for review of present and future legislation after the adoption of the Civil Code.

A meeting was held with Oleksandr M. Nahirny, Head of the Legal Department of the Anti-Monopoly Committee of Ukraine to explore areas of cooperation between the Commercial Law Center and that agency. The Committee had been working on a Law on the Protection of Competition since 1997 and it was finally adopted on 11 January 2001. The President, in the past has called this law a priority of Ukraine, and it is hoped that he will sign the legislation into law. In the next year it is important for the Anti-Monopoly Committee to widely publicize the new law and inform businesses of its impact on the Ukrainian competitive environment. In addition, there is a working group preparing Procedural Norms for the Protection of Competition based upon European Model Laws. The Anti-Monopoly Committee will prepare a letter request outlining specific areas in which the Center might assist and cooperate with the Committee.

OUTREACH & INFORMATION

During this reporting period the Project conducted a survey of over 60 local business entities and business associations regarding the types of seminars they would be interested in attending. On the basis of the survey results, the Project conducted

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two pilot seminars for representatives of the business community. The first was held in Kyiv on 28 November while the same topic was repeated in Lviv on 1 December. The latter was organized by Newbiznet in Lviv. Attendance at both seminars was good (though the snowstorm in Kyiv kept those numbers down) and there was markedly more interest at the regional seminar in Lviv, undoubtedly because of the lack of training provided there as compared to Kyiv. In both cases, however, it was difficult for the speakers to stay focused on their presentations since participants regularly directed questions towards resolution of their individual business problems thereby transforming the events into clinical sessions. Seminar participant exit surveys will be analyzed for information on how such seminars might be improved.

In late October the director of the former Commercial Law Clearinghouse provided the Project with two binders of reports outlining the Clearinghouse's activities over the past year. This apparently constituted the sole written archive of that project's activities. The Project was successful in locating a former employee of the Clearinghouse and in obtaining his services to assist in transferring the previous project's electronic interactive website files to us. This process began in mid-December and the Center had a mainpage (www.commerciallaw.com.ua) operational by the end of the year.

Contractor Coordination Meetings

The Project's second meeting of commercial law contractors was held on 9 November. Discussion centered on what the contractors see as the optimal legislative agenda for Ukraine in the current period in an attempt to begin establishing an integrated commercial law reform agenda.

The Project hosted a third meeting of commercial law contractors on 19 December. Our co-host for this meeting was the Ukraine Market Reform Education Program. The discussion focused on various ways projects can 'package' the legislative initiatives they are working on to facilitate their passage in parliament. As a USAID-funded operation, UMREP extended an invitation to fellow projects to avail themselves of their services.

TASK ORDERS

The Ukrainian Legal Foundation has resubmitted a revised budget for completion of its Russian-Ukrainian-English legal dictionary. The Project has determined that a subcontract will be the best vehicle to finance the work. USAID OER has indicated that it will begin making the formal arrangements to amend the Project's contract and issue a special task order.

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ACTIVITIES PLANNED NEXT REPORTING PERIOD

Specific activities during the quarter will include:

- Professional Development:
 - conduct Training Workshop II on “Contract Law”, and Workshop III on “Legal Regulation of Credit Transactions”,
 - organize CLE seminars in regions on “Trade Aspects in the Use of Objects of Intellectual Property Rights in Market Economies”, “Issues of Legislative Support of Small Businesses”, and “Problem Issues of Business (Commercial) Law Application Practices”,
 - develop legislative drafting CLE course,
 - conduct meetings of working group on commercial law curriculum reform, -
 - hold roundtable discussion on judicial clerkships;
- Legislative Development:
 - continue work on key legislative initiatives, including the financial services area, tax lien priorities, hypothecation,
 - organize OECD conference on investment policy;
- Outreach & Information:
 - initiate business seminars on “Commercial Law as Instrument for Protection of Entrepreneurs”,
 - publish first issue of Newsletter,
 - survey journalists in preparation for media seminars;
- Administrative & Institutional:
 - hire staff attorneys and Outreach & Information consultant,
 - continue search for deputy director, begin developing business plan for Center.

FINANCIAL STATEMENT & MONITORING PLAN UPDATE

Please see attached.

Petro Matiaszek
Chief of Party